

Law Offices of
MARTIN & ESKELSON, PLLC

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P.O. BOX 3189
IDAHO FALLS, ID 83403-3189
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RECEIVED

JUN 08 2006

DEPARTMENT OF
WATER RESOURCES

OFFICES:
425 S. HOLMES
IDAHO FALLS, ID 83401

June 6, 2006

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Re: Subcase No. 23-4000

Dear Clerk:

Enclosed please find a "Motion To Set Aside Partial Decree And File Amended Claim." Please place this of record in your file. We anticipate that the Idaho Department of Water Resources will duly notice this up for hearing in the future.

Very truly yours,



Scott P. Eskelson

Enclosures

cc: Mark Goddard
Danni Smith, IDWR

Scott P. Eskelson, Esq. (Bar #3054)
MARTIN & ESKELSON, PLLC
425 S. Holmes Avenue (83401)
P.O. Box 3189
Idaho Falls, Idaho 83403-3189
Telephone: (208) 523-6644
Facsimile: (208) 522-0791

Attorneys for Petitioner

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re: SRBA	)	Subcase No.23-4000
	)	
	)	MOTION TO SET ASIDE
Case 39576	)	PARTIAL DECREE AND
	)	FILE AMENDED CLAIM
	)	
	)	
_____	)	

This motion is made by Wayne Leasing, LLC, a Utah limited liability company, through its duly authorized undersigned member. This motion is to request that the Court set aside the partial decree entered with respect to the above-entitled right and to appropriately amend all records including filing an amended notice of claim, as required.

The basis for this motion is as follows:

1. It appears that through inadvertence the wrong "1/41/4" has been shown as to the place of use with regard to the above-entitled right.

2. The correct place of use is the NE1/4NW1/4, Section 14, Township 1 North, Range 43 EBM. More specifically the place of use is the S1/2NE1/4NW1/4 of Section 14, Township 1 North, Range 43 EBM.

3. As now shown by records, including the partial decree, the place of use is shown as the NW1/4NE1/4 of Section 14, Township 1 North, Range 43 EBM.

4. A question appears to have arisen as to the fact that currently the records of the Idaho Department of Water Resources ("IDWR") show only one home as receiving water from the springs involved in the above right. In fact, there have historically been two such homes receiving such water.

5. Attached hereto as **Exhibit "A"**, and by this reference incorporated herein, is a copy of a deed recorded in Bonneville County, Idaho, Instrument No. 1044868, on April 5, 2001 ("the Deed"). The Deed is the instrument by which the Estate of Dora B. Daniels conveyed certain property and a residence thereon, which residence receives domestic water and stock water under the above-referenced right. Tract II of the Deed identifies the property where the place of use is located.

6. Attached hereto as **Exhibit "B"**, and by this reference incorporated herein, is a copy of a document entitled "State of Idaho Department of Reclamation Claim to a Water Right" ("the Claim"). This is the original claim filed with respect to this subcase

by Mr. Ed Daniels. On the second page thereof, under item 4.c. note that the description of the diversion right refers to two 3/4" lines running parallel to one another going to the "Peterson Ranch, Van Noy", and the other to the Daniels Ranch. This language is evidence that in fact two residences were receiving water from this spring.

7. The affidavits attached to the Claim also describe the shared use of the water right and use of water from this spring.

8. Attached hereto as **Exhibit "C"**, and by this reference incorporated herein, is a copy of document entitled "Water Right Analysis Form - Data Entry" ("the Data Form"). Evidently this is the form used by the Idaho Department of Water Resources (or its predecessor agency) to enter information relating to water rights. This particular form shows in item 11 that water right no. 23-4000 was to be used for stock water and two homes. The notation regarding the two homes is a "D" which evidently would indicate domestic use and an "S" for stock water.

9. A separate water right has been previously confirmed to Mr. Dean Van Noy for domestic use at his residence, and it appears that the place of use for water right 23-4000, as described herein, should be changed to the property now owned by Wayne Leasing, LLC.

Date: June 7, 2006

MARTIN & ESKELSON, PLLC

By: Scott P. Eskelson

Scott P. Eskelson

WAYNE LEASING, LLC.

By: Mark E. Goddard

Mark Goddard

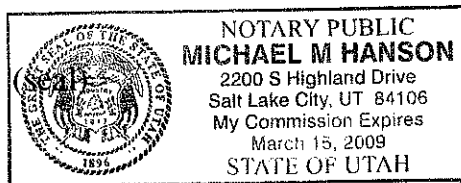
Title Managing Partner

VERIFICATION

STATE OF UTAH)
) ss.
County of Salt Lake)

Mark Goddard, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this motion for late or amended claim (as listed above) as defined by I.C. §42-1401A(1) and (7) and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Michael M. Hanson
Notary Public for Utah

Residing at Utah

My commission expires: 3-15-09

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of June, 2006, I mailed the originals and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

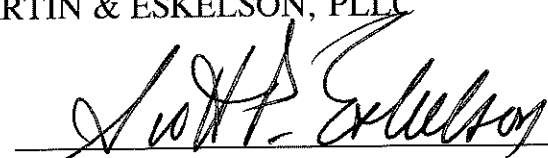
2. Copies to:
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
5450 West Fort Street, MSC 033
Boise, ID 83724

Danni Smith
Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

MARTIN & ESKELSON, PLLC

By: 

Scott P. Eskelson

G:\SharedFiles\Wendy'sMyFiles\SPE-Clients\8534\MotionSetAside.wpd

re-recorded to change vesting and address for grantee

BONNEVILLE COUNTY RECORDER
1043126 MAR 13 '01 PM 3:35
WARRANTY DEED

1044868 1043126
BONNEVILLE COUNTY RECORDER
1044868 APR 5 '01 PM 1:54

Order No. 14-19662 - D.O

FOR VALUE RECEIVED

Edda A. Clark as Personal Representative of the Estate of Dora B. Daniels, also known of record as Dora Daniels

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Wayne Leasing ~~LLC~~ L.L.C.

whose current address is

~~XXXXXX~~ 1555 Sun View Dr.
~~XXXXXX~~ Ogden, UT. 84405

the grantee(s), the following described premises, in Bonneville County, Idaho, County Recorder

TRACT I:

The South Half of the Southwest Quarter of Section 11, Township 1 North, Range 43, East of the Boise Meridian, Bonneville County, Idaho.

TRACT II:

The North Half of the Northwest Quarter and the Southeast Quarter of the Northwest Quarter of Section 14, Township 1 North, Range 43, East of the Boise Meridian, Bonneville County, Idaho.

TRACT III:

The North Half of the Northeast Quarter of Section 15, Township 1 North, Range 43, East of the Boise Meridian, Bonneville County, Idaho.

TOGETHER WITH: All water and water rights, ditch and ditch rights used in connection therewith and appurtenant thereto.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 2/28/2001

Edda A. Clark
Edda A. Clark Personal Representative to the Estate of Dora B. Daniels

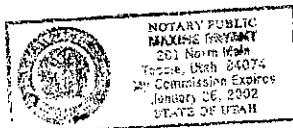
State of ~~Idaho~~ Utah }
County of ~~Bonneville~~ Tooele } ss.

On this 12th day of March, 2001, before me, a Notary Public in and for said state, personally appeared Edda A. Clark known or identified to me to be person whose name is subscribed to the within instrument as the Personal Representative of the Estate of Dora B. Daniels also known of record as Dora Daniels, Deceased, and acknowledged to me that Edda A. Clark executed the same as such Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Michael Bryant
Notary Public for the State of Utah
Residing at: Idaho Falls, ID Tooele, ut
Commission Expires: 02/15/04 1/24/02

Alliance Title & Escrow Corp.
451 Park Ave. P.O. Box 50642
Idaho Falls, ID 83405-0642



INSTRUMENT NO.	1044868
DATE	4-05-01
INST. CODE	205
IMAGED PGS	1
FEE	3.00
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss I hereby certify that the within instrument was recorded. Ronald Longmore, County Recorder By <u>W. Long</u> Deputy Request of <u>ATCC</u>	

INSTRUMENT NO.	1043126
DATE	3-13-01
INST. CODE	208
IMAGED PGS	1
FEE	3.00
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss I hereby certify that the within instrument was recorded. Ronald Longmore, County Recorder By <u>W. Long</u> Deputy Request of <u>ATCC</u>	

EXHIBIT "A"

Identification No. _____

Claim No. _____

Map No. _____

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
CLAIM TO A WATER RIGHT

Established by Diversion and Application to Beneficial Use

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

(Please refer to the instructions on the back of this form)

1. Name of claimant Ed Daniels
post office address Box 183, Irwin, Idaho 83428
2. The point of diversion is in SW 1/4 of NE 1/4 Section 15 Township 1N
Range 43 E B.M. located on SE 1/4 Papoose Creek at the fork of the canyon
(name of source)
tributary to Snake River in Bonneville County.

3. Dates of priority claimed: list the priority for each separate quantity that you claim. Priority dates should be based upon the earliest diversion of the water which has resulted in continued beneficial use since that time. If there has been an interval of five years or greater when the water was not beneficially used for the same purpose as originally appropriated, the priority that you claim should date from the time that the water was again beneficially applied following the period of non-use.

- a. Date of priority claimed: 1914

amount: 2011 c.f.s. or _____ acre feet
amount: _____ c.f.s. or _____ acre feet
amount: _____ c.f.s. or _____ acre feet
Total claimed _____ c.f.s. or _____ acre feet

*Continuous use since 1914
all water about 100 head of stock
each year and home since
1914. The amount given down both purposes*

- b. Explain the purpose for which the water has been used and the time during the year when you have used the right claimed:

use culinary period of use from Jan 1 to Dec 31 (both dates inclusive)
use water stock period of use from Jan 1 to Dec 31 (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive).

4. Description of diverting works:

- a. Surface water diversion dam and/or headgate: material is composed of n/a
length is _____ feet; height is _____ feet;

width at bottom is _____ feet; with at top is _____ feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known _____

- b. Underground water diverting works: is well flowing or pumped n/a; depth of well is _____ feet; diameter of well is _____ inches; type of pump is _____
capacity of pump is _____ g.p.m.; name and address of well driller is _____

attach well logs if available; has there been any change in pump or motor since well was first completed _____; if so, give dates and explain _____

- c. Conveying works: length of ditch to place of use is _____ feet; width of ditch at top is _____ feet; width of bottom of ditch is _____ feet; depth of water is _____ feet; grade of ditch per 1000 feet is _____ feet; material through which ditch passes is _____; maximum length of pipe line to first place of use is _____ feet; diameter of pipe line is _____ inches; type of pipe _____; grade of pipe per 1000 feet is _____.

Please explain any changes or increase in size of conveying system since water was first appropriated; give

ing date and dimensions if possible. Water originates in three springs. Pipes of 120", 150", and 250" lead to a cistern of 48"x 48" x 42" deep. This is made of cement. A 1 1/2" header leads from the cistern bearing approximate 470 East of North. Pipe proceeds 3000' to Y where it is reduced to two 3/4" lines running parallel, one going to the Peterson Ranch, "Van Noy", the other to the Daniels Ranch.

In addition a 3/4 " pipe picks up water out of the Papoose Creek and takes it 200' to a watering trough.

- it 200" to a watering trough.
d. If water is stored: name of reservoir _____ n/a _____;
total capacity of reservoir is _____ acre feet; active capacity of reservoir is _____ acre feet;
year construction commenced _____; year completed _____; date first used _____
period of storage is from _____ to _____; is reservoir drained each year _____;
is reservoir on or off stream _____ explain _____

if feeder canal is used give maximum carrying capacity _____ c.f.s.; if reservoir is off stream, describe location of reservoir by 40-acre subdivisions _____

has there been any enlargement of the reservoir since it was first built _____, if so, give dates and describe _____

5. a. Where water is used for irrigation, describe area irrigated by 40-acre subdivisions and give total acres:

[illegible]

Total number of acres to be irrigated _____

Explain any significant increase in area irrigated since first use, give dates and acreages if known _____

n/a

b. Do you get water through a ^{pipe} ditch owned by several users? Yes If yes, give the name of the ditch
None The other users and their respective

interests in the ditch are (if known) Albert Peterson - half interest

Ed Daniels - half interest
Daniels

6. Where water is used for stock watering, give number of each kind of stock watered

50 Head of cattle and 6 horses

7. Where water is used for domestic or municipal purposes give number of families served 2

name of town supplied none

8. Where water is used for other purposes not above enumerated, give the nature of use, the extent of use,

and any details regarding the initiation of the right or subsequent later expansion. Be as specific as possible,
giving dates and quantities n/a

9. Remarks: please explain any details of your claim which you feel need clarification or additional explanation

Albert Peterson filed for and obtained a water license thereafter making
a verbal agreement with Ed Daniels for each to use half of the water.
The water has been used consistently since 1914 by Ed Daniels or his
representatives.

State of Idaho

County of Blaine

ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Edward Daniels
Claimant

Sworn to before me this 29 day of April, 1971

Ray Thatcher
Notary Public

Residing at Carey Idaho

My commission expires 3-11-71

Received by ij Date 5-3-71 For Department Use Only

Exception filed by:

Forwarded to
claimant by:

Date

Prelim. check by DOF Date 5/17/71

Fee received by ij Date 5/18/71 Fee \$ 10.00

Approved for publication by D

Published in Idaho Post Register Dates 6-3-71 to 6-10-71

23 4000

INSTRUCTIONS

Your claim should set forth all necessary information to describe your claimed right. Failure to give enough information may make your claim of little value. Some of the items in the form may not apply to your situation. Please use additional sheets if space provided is not sufficient to fully answer the questions.

Paragraph No.

1. Give full name and post office address of person or company making the claim.

2. Describe the point of diversion by 40-acre subdivision. Give the name of the source, the drainage to which it is tributary if surface water, and the county in which the point of diversion is located. If there is more than one point of diversion, list others in the remarks section.

3. Give the priority dates and the quantities of water that you claim. You should accurately list the dates that you initiated each new use of the water. List separately the dates and amounts of water involved in each enlargement of the diversion. (Example: if you diverted 0.8 c.f.s. of water for irrigation on May 18, 1871, for the first time for use on 40 acres of land, and then later you enlarged the diversion by diverting an additional 0.4 c.f.s. of water to irrigate an additional 20 acres of land on June 1, 1901, your right should be described as follows:

Date of priority claimed:	May 18, 1871	amount:	0.8 c.f.s. or	acre feet
	June 1, 1901	amount:	0.4 c.f.s. or	acre feet
	Total claimed:		1.2 c.f.s. or	acre feet

Since the water was used for irrigation between April 1 and October 31 on that particular farm, part b. would be completed as follows:

use irrigation period of use from April 1 to October 31 (both dates inclusive). If the water had been used for any other purpose, you would have described the priority date, amount, use, and period of use in a similar manner.

4. Describe the diversion works and explain any changes since the right was first initiated.

5. If the water is used for irrigation, give the total acreage and list the lands irrigated by 40-acre subdivisions and complete the other questions.

6, 7, & 8. Describe any other uses of water.

9. In the remarks section, give any information or details that you feel are not fully covered or that need clarifying. You might explain your operation, where the water is returned to if for an industrial or non-consumptive right, the condition and temperature of the returned water, and any other information to help explain your claim.

You may wish to include as a part of your claim, affidavits of witnesses who are familiar with your right and who have a personal knowledge of the circumstances which you have described in your claim. You may submit maps, drawings, certified copies of posted notices which may have been filed in the county courthouse, water measurement records, or any other document which you feel will support your claim.

Your claim will be advertised in a county newspaper for two weeks. Exceptions to your claim which dispute the water right that you have described may be received by the Department of Reclamation and you will be provided a copy of such exceptions.

The fee for filing this claim with the Department of Reclamation, Room 107, Statehouse, Boise, Idaho 83701, is \$10.00.

IN THE MATTER OF:

Water Right

State of Idaho
County of Bonneville

RECEIVED
OCT 18
AFFIDAVIT Department of Reclamation

Carl H. Adams

being first duly sworn,

deposes and says: Ed Daniels has shared the water right that is filed in
the name of Albert Peterson on Papoose Creek county of Bonneville near
Swan Valley in the State of Idaho, through verbal agreement since the year
1914. Said water has been used and is being used for culinary irrigation
of garden and berries, and watering of stock. Said water runs through
Ed Daniels property description: N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 14 T $\frac{1}{2}$ in R 43, in order
to reach the Albert Peterson property. Ed Daniels has maintained Papoose Creek
with practically all the labor and his fair share of money since the year 1914.
Therefore, it is completely fitting and proper that he have a water right
filed in his name with the department of Reclamation State of Idaho.



Carl H. Adams
(signature)

Subscribed and sworn to before me this 16th day of August 19 69.

Julia M. Meckling
(Notary Public)

Residing at Swan Valley, Idaho.
My commission expires November 14, 1972

RECEIVED

OCT 13 1969

IN THE MATTER OF:

Water Rights

Department of Reclamation

AFFIDAVIT

State of Idaho
County of Bonneville

William E. Hill

being first duly sworn,

deposes and says: Ed Daniels has shared the water right that is filed in
the name of Albert Peterson on Papoose Creek county of Bonneville near
Swan Valley in the State of Idaho, through verbal agreement since the year
1914. Said water has been used and is being used for culinary, irrigation of
garden and berries, and watering of stock. Said water runs through Ed Daniels
property description: NE NW 1/4 SE 1/4 NW 1/4 Sec. 14 Tp in R 43, in order to reach the
Albert Peterson property. Ed Daniels has maintained Papoose Creek with
practically all the labor and his fair share of money since the year 1914.
Therefore, it is completely fitting and proper that he have a water right
filed in his name with the department of Reclamation State of Idaho.



Wm E Hill
(signature)

Subscribed and sworn to before me this 16th day of August 1969.

John W. Wechling
(Notary Public)

Residing at Swan Valley, Idaho
My commission expires November 14, 1972

WATER RIGHT ANALYSIS FORM

- DATA ENTRY -

Identification No. 23-4000
 Old No. 1 New No. 23-4000

Record

1. Original Owner: Ed. Daniels
- Present Owner: _____
2. Address: P.O. Box 183
3. City: Irwin State: ID Zip: 83428
4. A. Source of Water: ~~Papoose~~ Springs + Papoose Creek
- B. Tributary of: Papoose Creek + Snake River
5. A. Stage (A,P,L,D,S,J): S
- B. Status (D,L,R,C,A,I,F - leave blank if valid):
- C. Priority Date: 6-1-1914
- D. County: 19
- E. Total Diversion Rate: .01
- F. Total Diversion Volume:
- G. Transfer/Amendment (P,T of A or blank):
- H. Water District: 01
- I. DLE/Carey Act (D,C or blank):
- J. Right Basis (for adjudication claims A,B,C only):

	Tract	Sec.	Twp.	Rge.	Gov't Lot	Rediv.
6. A. Point of Diversion	<u>SW SE</u>	<u>15</u>	<u>1N</u>	<u>43G</u>		

7. Period of Use, Use, Diversion Rate/Volume:

from 1-1 to 12-31 for S purposes. Amount .01
 (cfs or AG-FT/yr)

from 1-1 to 12-31 for D purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

72379

[illegible]

9. A. Decree Name:

B. Decree Date:

10. Remarks: A. Sources are springs, trib. ~~the~~ Papoose Ck.; Papoose Ck.,
B. trib. Snake River R.
C.
D.
E.

11. Other Uses (Non-irrigation explanatory information):

5/56 head D/2 homes

12. Other Rights for Same Use:

13. A. Proof Due Date:

B. Date Permit Approved or Denied:

C. Protested Date:

D. Hearing Date:

E. Old Number:

F. Proof Made (P or blank):

G. Field Exam Made (P,R,F or blank):

H. Conditions of Approval:

14. Diversion Means (brief narrative):